IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.780 OF 2007

Dr.Kailas Rameshwar Jaju ...Petitioner
vs.
1.Smt.Kapila Kailas Jaju
2.State of Maharashtra ...Respondents

WITH
WRIT PETITION NO.1765 OF 2007

Sau.Kapila Kailas Jaju ...Petitioner
vs.
Dr.Kailas Rameshwar Jaju ...Respondent

Mr.Shinde i/b Mr.Vinod Shah for the Petitioner in W.P.No.780/2007 and for Respondent in W.P.No.1765/2007
Mr.N.R.Bubna for Respondent No.1 in W.P.No.780/2007 and for Petitioner in W.P.No.1765/2007

CORAM: A.S.OKA,J.
DATE : MAY 4,2007.

P.C.:

1. Submissions of the Advocates for the parties were heard on the last date. The dispute is between the husband and wife. In a matrimonial petition filed by the husband, the wife applied for interim maintenance under section 24 of the Hindu Marriage Act,1955. By order dated 16th November 2006, Application made by the wife was allowed by directing the husband to pay maintenance at the rate of Rs.7000/- p.m. from the date of filing of the Application. The husband was directed to pay costs of Rs.5,000/- of the said Application.

2. The submission of the learned Advocate for wife is that considering the large income of the husband to the tune of

Rs.1,40,000/- per month, the maintenance awarded in the sum of Rs.7,000/- is extremely on the lower side. The submission of the learned advocate for the husband is that the impugned order shows non application of mind in as much as the learned Judge has not adverted to the contentions of both the parties regarding income of the husband. He submitted that the amount of Rs.7000/- is arbitrarily fixed.

3. I have considered the submissions. There was a controversy between the parties as regards the quantum of monthly income of the husband. Perusal of the impugned order shows that the learned Judge has not at all considered as to what is the income of the husband. While fixing the quantum of interim maintenance, the learned Judge was required to consider the status of the husband so that appropriate amount of interim maintenance could be fixed consistent with the status and income of the husband. The learned Judge has only referred to the credit balance of the bank account of the wife and by a cryptic order has fixed the monthly maintenance of Rs.7,000/- per month.

4. In my view, the impugned order deserves to be quashed and set aside with a direction to the learned Judge to decide the application afresh after considering rival contentions regarding the income of the husband. It is stated that the husband has complied with order dated 6th February 2007 passed

in Writ Petition No.780 of 2007 by depositing the requisite amount. Till the application at Exh.11 is decided afresh, the husband will keep on paying a sum of Rs.4,000/- per month to the wife by way of an ad-hoc arrangement. The wife is entitled to withdraw a sum of Rs.26,000/- deposited by the husband in the trial court. The wife is also entitled to withdraw a sum of Rs.5,000/- deposited by the husband in this Court by way of costs.

5. Hence, the Petitions are disposed of by passing the following order :

i) That part of the impugned order dated 16th November 2006 by which interim alimony of Rs.7,000/- is granted is quashed and set aside.

ii) Application at Exh.11 is restored to the file of the learned trial Judge.

iii) The direction regarding payment of costs passed by the impugned order is confirmed.

iv) The learned Trial Judge will decide the Application at Exh.11 afresh in the light of observations made in this Judgment.

v) The learned Trial Judge will decide the Application at

Exh.11 as expeditiously as possible and preferably on or before 17th August 2007. In the meanwhile, the husband will continue to pay a sum of Rs.4,000/- per month to the wife on or before 10th of every calendar month. The wife is permitted to withdraw a sum of Rs.26,000/- deposited by the husband in the trial Court. The wife is also entitled to withdraw a sum of Rs.5,000/- deposited in this Court.

vi) All contentions of the parties on merits are expressly kept open.

vii) Petitions are partly allowed in above terms.

viii) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE